

REMARKS

Claim 1 has also been amended by incorporating the subject matter of claim 4 into it. Accordingly, claim 4 has been canceled.

New claim 47 has been added. This claim incorporates the subject matter of claims 1, 4 and 6 into it. Accordingly, claim 6 has been canceled.

Claims 1, 2, 5, 7-10 and 12-47 are currently pending, although claims 7-9, 17-19 and 44-46 have been withdrawn from consideration. Upon indication of allowable subject matter, Applicants intend to seek rejoinder of withdrawn claims as appropriate.

The Office Action rejected claims 1, 2, 4-6, 10, 12 and 20-43 under 35 U.S.C. §103 as obvious over U.S. patent 6,627,121 (“Krongauz”) in view of U.S. patent 6,123,952 (“Lagrange”), and claims 13-16 under 35 U.S.C. §103 as obvious over Krongauz, Lagrange, and U.S. patent 6,369,147 (“Polonka”). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

The claimed invention relates to cosmetic compositions comprising, in a physiologically acceptable medium, at least two dyes, including at least one photochromic dye, wherein the photochromic dye has a difference in hue ΔE between its excited state and its unexcited state at least equal to 5 and at least one specified naphthopyran derivative, wherein the naphthopyran derivative is present in the composition in a dissolved form. As demonstrated in the examples of the present application, such compositions can provide a novel dynamic effect in terms of color and radiance. For example, the invention compositions can reversibly change color within a very short period of time after exposure to UV radiation or cessation of such exposure. Such compositions can also compensate for the

color alteration phenomenon which is generally associated with poor behavior of conventional pigments with respect to sebum. The art upon which the Office Action has relied neither teaches nor suggests such compositions, or any of these benefits associated with the invention compositions. In short, the invention compositions and their benefits could not have been expected from the combination of references cited by the Office Action.

Regarding Krongauz, Krongauz does not teach or suggest the required photochromic dyes. For example, in formula (Ia) of the claims, the naphthopyran moiety is never substituted with a benzyl group in position 8. Similarly, with respect to formula (IIa) of the claims, the oxygen atom is not at the same position, and the resulting naphthopyran moiety is never substituted with a benzyl group. Thus, the claimed dyes differ from Krongauz's dyes.

Furthermore, Krongauz neither teaches nor suggests placing his dyes into cosmetic compositions. Rather, Krongauz teaches incorporating his dyes into polymeric materials such as plastic articles or optical lenses. (See, col. 2, lines 58-67). Consequently, Krongauz relates to a different field than the present invention --- nowhere does Krongauz teach or suggest compositions having the properties (for example, toxicity and tolerance) required by cosmetic/makeup compositions. Given this, one skilled in the art would not have looked to guidance from Krongauz when attempting to formulate a cosmetic product.

For the foregoing reasons, Applicants respectfully submit that the pending rejection of the pending claims based upon non-analogous art which does not disclose the claimed dyes (like Krongauz) is improper and should be withdrawn.

Lagrange does not compensate for Krongauz's fatal deficiencies. Lagrange states that his compositions contain only thermally irreversible photochromic compounds which are

diarylethene derivatives, not naphthopyran compounds. Thus, Lagrange discloses very structurally different dye compounds. For at least this reason, Lagrange and Krongauz cannot teach or suggest the claimed compositions: neither reference discloses the required dyes, so their combination cannot result in the claimed compositions.

Moreover, Lagrange's disclosure specifically excludes reversible photochromic compounds from his compositions. (See, col. 2, lines 59-62). This is consistent with the purpose of Lagrange's compositions which is to provide cosmetic compositions which exhibit little or no color change, whether the composition is exposed to UV radiation or not. (See, col. 2, lines 20-25). Given that Lagrange states that his compositions can contain only irreversible photochromic compounds, no motivation would have existed to use a structurally different reversible chromatic compound in his compositions. In fact, such a combination would have rendered Lagrange's compositions unsuitable for their intended purpose. Under such circumstances, no motivation could have existed to combine Krongauz and Lagrange. See MPEP § 2143.01.

Similarly, Polonka does not compensate for Krongauz's and Lagrange's fatal deficiencies. Polonka, like Krongauz, relates to a field other than cosmetics and, thus, would not have been considered when formulating a cosmetic composition. Specifically, Polonka relates to corrosion resistant pigments useful in painting or coating compositions (col. 2, lines 52-54; col. 6, line 48). Nowhere does Polonka teach or suggest adding the required photochromic naphthopyran derivative to his compositions for any purpose, let alone for the purpose of making a cosmetic composition. In other words, Polonka merely relates to goniochromatic pigments, and neither teaches nor suggests the required naphthopyran

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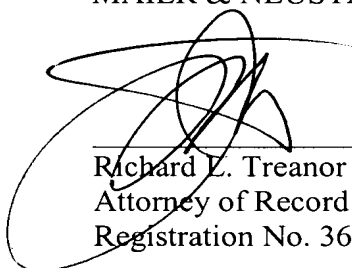
derivatives or combining the required photochromic dyes with the required goniochromatic coloring agents. Thus, Polonka cannot compensate for the other references' deficiencies.

For all of the above reasons, Applicants respectfully request reconsideration and withdrawal of the §103 rejections.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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